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 7 United States of America

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,)	Civil No. 09cv0254-JM(AJB)
)	
11 Plaintiff in Interpleader,)	
)	
12 v.)	STATUS REPORT BY PLAINTIFF
)	UNITED STATES OF AMERICA
13 BETTYE JAN BAKER ADAIR, ET AL.,)	
)	
14 Defendants in Interpleader.)	
_____)	

15
 16 Plaintiff in Interpleader, United States of America, by and through Karen P. Hewitt,
 17 United States Attorney, and Leah R. Bussell, Assistant United States Attorney, does hereby file
 18 a status report in the above-captioned action as directed by Court order dated March 10, 2009.

19 I.

20 NAMES AND STATUS OF REPRESENTATION OF DEFENDANTS

21 There are 102 answering Defendants in Interpleader as of the date of the filing of this status
 22 report which answers claim a total of \$3,666,352.71.¹ Of those answering Defendants, six (6) are
 23 represented by counsel and ninety-six (96) are pro se. Fourteen (14) of the answering Defendants
 24 reside in the United States and represent a total of \$1,295,722.00 in claims to the monies in
 25 interpleader. Attached hereto as Exhibit 1 is the list of all answering Defendants with names,
 26 contact information, amounts claimed, status of representation, and documentation for any claimed
 27 loss noted thereon.

28 _____
¹\$5,322,885.09 was deposited into the Registry of the Court.

1 In addition to the forgoing filed answers, there is a pending motion for intervention in the
2 action by a group of Canadian class action plaintiffs which is scheduled for June 12, 2009, before
3 Judge Miller. That group of class action plaintiffs is represented by Thomas McNamara, Esq.,
4 LaBella & McNamara, LLP. In addition to seeking to intervene in the action as a Defendant
5 group, the Canadian class action plaintiffs also seek to have the Court limit the exercise of its
6 jurisdiction in this matter.

7 Two separate requests for Clerk's entry of default have been submitted by Plaintiff to
8 default interests of non-answering and non-participating named Defendants in Interpleader. The
9 first default was entered by the Clerk of Court April 7, 2009, as to four Defendants in Interpleader.
10 The second request for default was submitted May 13, 2009, as to ten additional Defendants in
11 Interpleader, and is pending.

12 II.

13 REPORT OF THE FBI TRACING OR IDENTIFYING VICTIMS AND LOSSES

14 Federal Bureau of Investigation Special Agent John Ireland has reviewed the answers of
15 the answering Defendants. He has compared the answers, names, and amounts claimed with the
16 limited records in the possession of the Federal Bureau of Investigation from the investigation
17 conducted into the criminal activity of Cameron Campbell.² From those records, he has been able
18 to match with some degree of certainty 16 named answering Defendants in Interpleader. Such
19 answering Defendants claim approximately \$469,537.03 of the deposits into the accounts seized
20 in this case, but the bank records examined by the FBI could match with some degree of certainty
21 only approximately \$267,037.03 of actual checks. Such answering Defendants matched were
22 based upon the checks provided by the answering Defendants corroborated by matches from bank
23 records. Attached hereto as Exhibit 2 is a list containing his analysis of the answers as compared
24 to the records in the possession of the United States. The balance of the Defendants in Interpleader
25 cannot be matched by name, by amount or by lack of supporting bank documents. As to the "not
26 enough information" category of remitters, such answering Defendants did not provide

27
28 ²Cameron Campbell was convicted of fraud in connection with a separate scheme in 06-
CR-1021-BTM.

1 documentation traceable to the deposited checks, or did not match a name or amount claimed, as
2 compared to bank documentation from the 247 deposited checks. As to the “no matching
3 remitters” category, such answering Defendants could not be identified relative to the seized funds
4 in any manner. The analysis does not reflect culpability or identification of involvement in the
5 underlying fraud offenses.

6 III.

7 COSTS OF PUBLICATION OF FURTHER NOTICE IN THIS CASE

8 The United States provided direct written notice via service of the summons and complaint
9 to all known defendants in interpleader who had identified addresses for service of process.
10 Included in the notice of the action was the counsel for a Canadian civil class action which
11 represents Canadian citizens of HMS’ fraud in Canada. In addition, the United States posted
12 notice of the interpleader, including copies of the summons and complaint, on its office website,
13 <http://www.usdoj.gov/usao/cas/HMS%20Financial%20Fraud.html>. The United States also sent
14 numerous emails and written correspondence to potential defendants who contacted the
15 United States Attorney directly. The United States was also informed by some of the answering
16 and prospective answering Defendants that email notices were sent out by other victims and third
17 parties with knowledge of the interpleader case.

18 The United States inquired into the costs of publication of notice of the action in the
19 United States and Canada, as victims of the fraud reside in both countries. The costs of publication
20 were quoted as follows: Wall Street Journal (U.S. & Canada) - \$194,174.62 for Monday through
21 Friday publication - \$213,928.41 for Monday through Saturday publication; and USA Today (U.S.
22 & Canada) for Monday through Friday publication - \$188,529.00. The United States has not
23 published notices of the action in either newspaper.

24 It seems unlikely that publication of notice of the action will significantly contribute to
25 further participation in the case when weighed against the costs of publication. The fraud resulting
26 in the seizures in this case occurred in 2001-2004, and the vast majority of the fraud occurred in
27 Canada. It is now 2009 - five years after the fraud was completed. A number of answers have
28 already been filed, the vast majority of which represent Canadian residents. The intervention

1 motion by the Canadian civil class action is pending. According to counsel for the Canadian civil
2 class action pending against HMS and its principals, under Canadian law the class action includes
3 Canadian citizens unless they specifically opt out of the action. If a receiver is appointed in this
4 case, the receiver can re-examine the issue of notice and make further recommendation to the
5 Court.

6 IV.

7 ALTERNATIVES AVAILABLE TO THE COURT IN PROCEEDING WITH THE ACTION

8 There are several alternatives available to the Court in proceeding with this action. The
9 first is to attempt to obtain a consent decree from all answering Defendants agreeing to the payout
10 of all losses. At first blush this seems a highly practical measure in that the current answering
11 Defendants' claims total less than the amount on deposit with the registry of the Court. However,
12 there is a pending motion to intervene by the Canadian civil class action plaintiffs which, if
13 granted, would result in answering Defendants' claims exceeding the amount on deposit by a
14 significant amount. Therefore, unless that motion to intervene were to be denied, this alternative
15 seems unlikely.

16 The second alternative is to order the distribution of the funds to all Defendants whose
17 answers and claims to the funds, can, in fact, be traced directly into the funds seized by the
18 United States from the two bank accounts. As set forth in the Government's complaint, there were
19 247 checks deposited into the two accounts. Some of the checks had identifiable information such
20 as a full name of a payor. However, there were a number of checks which bore only partial names
21 or no names. Some of the checks also represented transfers by consolidators or co-conspirators
22 in the fraud, who consolidated multiple persons' checks or funds into a single check from the
23 consolidator. Therefore, even if a person is identified, it would be a disservice to the true victims
24 to return funds to consolidators or co-conspirators in the fraud scheme. The United States was
25 informed by counsel for the Canadian class action plaintiffs, that there are several answering
26 Defendants in Interpleader who are either co-conspirators in the fraud of HMS or acted as
27 consolidators for HMS. The records supporting such information are not within the control of the
28 United States. Finally, as noted above, the amounts seized exceed the total amounts claimed in the

1 answers as of the date of the filing of this status report. If the Court were to distribute funds to
2 only those Defendants with directly traceable claims, there is the question of how to deal with the
3 balance of the funds, as well as to whom the responsibility should lie with respect to tracing and
4 examining answers and claims.

5 A third alternative is to appoint a receiver to examine all administer all the answers and
6 conduct the necessary discovery in the case to make a plan of recommended distribution. The
7 appointment of a receiver is costly and should be weighed by the Court against the small amount
8 on deposit in this case, i.e., only \$5.3M. The Court may consider the appointment of a receiver
9 with a limited duties and a limited budget solely for the purpose of performing the functions of
10 alternative number 2, with the balance of any undistributed funds then turned over to the Canadian
11 civil class action now pending in Canada.

12 A final alternative, is to have the Court abstain and transfer the funds in their entirety to the
13 pending civil class action in Canada. While again, at first blush appearing to have some appeal,
14 such an abstention would be a disservice to those victims whose funds are in fact traceable to the
15 seized money. This is true for a number of reasons. First, they have already been victimized by
16 HMS and not had their money or any return on the money since at latest 2004. Second, they have
17 submitted evidence, or have evidence of their losses and payment to HMS. Third, they have been
18 compelled by the filing of this action to participate in a court case in which they hold out hope of
19 repayment of at least the principal of their debt. Fourth, they have not agreed to pay an attorney
20 (as to pro se answering Defendants) or have their moneys surcharged the costs and expenses of
21 counsel in getting their moneys back. Finally, abstention would not be in the best interests of the
22 United States citizen victims who would then be forced to participate in a foreign court and litigate
23 under foreign law with unknown results.

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26 //

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V.

CONCLUSION

Based upon the forgoing, the Government recommends that the Court appoint a receiver. The Government recommends that the appointment of the receiver be for the limited purposes of examining the answers and records of deposit to formulate a plan of distribution of traceable funds to traceable victims with the balance of funds remitted to the Canadian civil class action for further distribution to the victims of the HMS fraud.

DATE: May 15, 2009

KAREN P. HEWITT
UNITED STATES ATTORNEY

s/ Leah R. Bussell
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No. 09cv0254-JM(AJB)
)	
Plaintiff,)	CERTIFICATE OF
)	SERVICE
v.)	
)	
Bettye Jan Baker Adair, et al.,)	
)	
Defendant.)	
_____)	

IT IS HEREBY CERTIFIED that:

I, Leah R. Bussell, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, CA 92101-8893.

I am not a party to the above-entitled action. I have caused service of STATUS REPORT OF THE UNITED STATES OF AMERICA on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Lindsay Jane Foster, lindsay@hulethharper.com
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3. Kirk B. Hulett kbh@hulethharper.com, office@hulethharper.com
4. Randall L. Winet, Winet@wpwlaw.com, crivera@wpwlaw.com

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the non-ECF participants in this case (see attachment). These are the last known addresses, at which places there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 15, 2009.

s/ Leah R. Bussell

LEAH R. BUSSELL

ATTACHMENT TO CERTIFICATE OF SERVICE
FOR STATUS REPORT OF THE UNITED STATES OF AMERICA,
Case No. 09cv0254-JM(AJB)

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